

Message Text

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ORIGIN ARA-10

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APPROVED BY L:SSCHWEBEL

ARA/E P:RWEBER

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA

INFO AMEMBASSY OTTAWA

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E.O. 11652: GDS

TAGS: EIND, EINV, PFOR, PE

SUBJECT: MARCONA - ACT OF STATE DOCTRINE

REF: LIMA 8579

1. ACT OF STATE DOCTRINE IN US COURTS IS A JUDICIAL DOCTRINE WHICH PROVIDES THAT US COURTS WILL GENERALLY NOT EXAMINE ON THE MERITS THE ACTS OF A FOREIGN SOVEREIGN TAKEN WITHIN THE LATTER'S TERRITORY. SEVERAL LIMITATIONS HAVE BEEN IMPOSED ON THE DOCTRINE IN RECENT YEARS, BOTH JUDICIALLY AND BY LEGISLATION. SECTION 620(E)(2) OF THE FAA PROVIDES IN EFFECT THAT THE DOCTRINE IS NOT TO BE APPLIED TO BAR ADJUDICATION ON THE MERITS IN CASES WHERE A CLAIM OF TITLE OR RIGHT OF PROPERTY IS ASSERTED IN A MATTER IN WHICH AN ACT OF A FOREIGN STATE IN VIOLATION OF INTERNATIONAL LAW IS ALLEGED. THIS PROVISION HAS BEEN GENERALLY INTERPRETED AS INTENDED TO COVER "HOT" PRODUCTS, WHERE EX-

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PROPRIATED PROPERTY OR PRODUCTS DERIVED THEREFROM ARE

INTRODUCED IN THE UNITED STATES.

2. IT IS OUR UNDERSTANDING THAT APPLICATION OF ACT OF STATE DOCTRINE IN CANADIAN COURTS MAY BE MORE ABSOLUTE; WE WOULD APPRECIATE ANY CLARIFICATION CANADIAN ECONOMIC OFFICER CAN PROVIDE.

3. ACT OF STATE DOCTRINE IS DISCUSSED EXTENSIVELY IN WHITEMAN'S DIGEST OF INTERNATIONAL LAW. SEE VOLUME 6, PAGES 1-54.

4. WE ARE PLEASED TO LEARN THAT CANADA WOULD NOT WISH TO BECOME INVOLVED IN LITIGATION OVER OWNERSHIP RIGHTS TO SAN NICOLAS PELLETS. TO THE EXTENT CANADIAN GOVERNMENT IS IN A POSITION TO DO SO, WE WOULD FIND IT HIGHLY DESIRABLE THAT IT ENDEAVOR TO DISCOURAGE ANY CANADIAN FIRM OR SUBSIDIARY FROM PURCHASING SAN NICOLAS PELLETS. INGERSOLL

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